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IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

INGRID HENDRICKS,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 1999-033
)	
GRACIANO BELARDO,)	
)	
Defendant.)	
)	

ATTORNEYS:

Ingrid Hendricks, pro se,
c/o Madga Moolenaar
3533 W. Muhammad Ali Blvd.
Louisville, KY 40212
For the plaintiff,

Lee J. Rohn, Esq.,
St. Croix, U.S.V.I.
For the defendant.

MEMORANDUM

MOORE, J.

This matter is before the Court on Graciano Belardo's ["Belardo"] motion to dismiss this diversity action and his motion to deem conceded his motion to dismiss. The plaintiff, Ingrid Hendricks ["Hendricks"], has not opposed either motion, and the times for filing her responses in opposition are past. See LRCi 56.1(b). The motions are therefore ripe for consideration on the movant's papers alone. Finding that Hendricks is not a true party in interest in this matter, the Court will dismiss the complaint. Further, Count One of the

complaint suffers from a host of deficiencies, each of which constitutes an alternative basis for dismissal of that count.

I. BACKGROUND

Hendricks seeks to invalidate a revocable trust established by her now deceased father, Christian Hendricks [the "decedent"], on grounds that the defendant trustee, Belardo, breached his fiduciary duty when he allegedly "doctored" the decedent's checkbook and unduly influenced the decedent while he was frail and suffering from Alzheimer's disease. Plaintiff has invoked this Court's diversity jurisdiction since she resides outside of the United States Virgin Islands and defendant resides in St. Croix, U.S. Virgin Islands. Hendricks alleges that the decedent had been diagnosed with and adjudicated as suffering with Alzheimer's disease in the first half of 1996, months before the decedent created the revocable trust at issue, dated November 5, 1996. Hendricks theorizes that Belardo, a trusted friend and bookkeeper for the decedent, took advantage of her father's mental and physical infirmity and improperly influenced the decedent to name Belardo as trustee.

Hendricks asks the Court to issue a declaratory judgment that the trustee violated his fiduciary duty and unduly influenced the decedent, to declare the trust invalid, and to award Hendricks forty-five million dollars in actual and punitive

damages. Belardo has denied the allegations and has filed unopposed motions to dismiss and to deem conceded the motion to dismiss.

II. DISCUSSION

A. Plaintiff is Not a True Party in Interest

A plaintiff must have standing to assert this Court's jurisdiction over a claim. *See Allen v. Wright*, 468 U.S. 747 (1984). To have standing, a "plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Id.* at 751. The injury alleged must be "distinct and palpable" and not "abstract" or "conjectural" or "hypothetical." *Id.* (quoting *Los Angeles v. Lyons*, 461 U.S. 95, 101-102 (1983), *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 100 (1979), and *O'Shea v. Littleton*, 414 U.S. 488, 494 (1974)) (internal quotation marks omitted). A plaintiff whose interests are not materially affected by the outcome of the litigation is not the real party in interest and may not maintain the litigation in federal court. *See Fed. R. Civ. P. 17(a).*

In the case sub judice, Hendricks is not a true party in interest and therefore lacks standing to litigate this matter. Under the terms of the trust agreement, Hendricks receives five

dollars. Assuming arguendo that her first claim, that Belardo doctored the books, is cognizable, neither the alleged doctoring nor the remedy sought therefor in Count One would have a material effect on her *de minimis* five dollar interest in the trust corpus. The true parties in interest would be those beneficiaries of substantial sums, of which there are more than a dozen designated in the trust agreement, none of whom has seen fit to file suit or join this suit against the trustee.

With respect to Count Two, Hendricks has also not shown that she possesses a material interest in or would benefit from an invalidation of the trust agreement. If the trust agreement were invalidated, she still would receive only five dollars under the terms of the decedent's last will and testament ["will"], which Hendricks does not contest. Item VI of the decedent's will, entitled "Gift of Remainder," provides for the "pour over" of all of the decedent's property, except for some personal and household effects devised in Item V of the will, into the trust for distribution according to the terms of the trust agreement. Item VII of the will, entitled "Alternative Gift of Remainder," provides that, in the event that the bequest and devise in Item VI fails, the rest, residue and remainder of the decedent's property be devised to the executor of the will for distribution according to the terms of the trust agreement. Accordingly, even if the Court were to invalidate the trust agreement, Hendricks

would still only receive five dollars under the terms of the will, which incorporates by reference the distribution scheme of the trust document.

In short, Hendricks has demonstrated no interest in the claims and remedies she is pursuing. This matter will therefore be dismissed for lack of standing.

B. Alternative Bases for Dismissal of Count One

Count One suffers from a host of infirmities, each of which serves as an alternative ground for dismissal of this count. Count One simply states that Belardo "violated his fiduciary duty when he doctored the Decedent's checkbook" and seeks a declaratory judgment that Belardo violated his fiduciary duty. The accusation fails to state a claim for several reasons, but primarily, because there is no statement of causation. Hendricks does not state what doctoring occurred, whether the doctoring was harmful or corrective in nature, and how the alleged doctoring damaged her or the trust corpus. In so far as Count One may be a claim for fraud, it also fails to state the circumstances with the particularity required under Rule 9(b) of the Federal Rules of Civil Procedure. Even assuming that Count One were cognizable, the true parties in interest, and indeed indispensable plaintiffs, must be the major beneficiaries, whose share of the trust might be materially affected by any fraud that diminishes the trust corpus.

The joinder of indispensable parties is governed by Rule 19(a) of the Federal Rules of Civil Procedure.¹ In a suit by an immaterial beneficiary of a trust alleging a violation of the trustee's fiduciary duty, the other beneficiaries should be joined as plaintiffs. Beneficiaries of a trust clearly are necessary and indispensable parties to an adjudication affecting the corpus of the trust or otherwise affecting the rights of the beneficiaries.

[W]hen a trust beneficiary brings a suit which affects more than her own interests, or which affects the corpus of the trust, all other beneficiaries are generally held to be necessary parties and must be joined. Generally, beneficiaries are proper and necessary parties to any litigation involving their interests to which the trustee or other beneficiaries are antagonistic.

76 AM. JUR. 2D *Trusts* § 672 (1999) (footnotes omitted).

In a suit by a trustee for construction or by one beneficiary to protect his interest, it is generally held that all beneficiaries (or the other beneficiaries) are necessary parties since a decree will or may benefit or prejudice them. Their interests may conflict and the trustee has an interest adverse to them and should not be allowed to represent them.

¹ Rule 19(a) of the Federal Rules of Civil Procedure requires joinder of a person who

claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

GEORGE G. BOGERT & GEORGE T. BOGERT, *THE LAW OF TRUSTS AND TRUSTEES* § 871
(2d ed. rev. 1995).

When joinder of indispensable parties would deprive the court of jurisdiction over the subject matter of the action, "the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable." See Fed. R. Civ. P. 19(b). In this case, the majority, if not all of the beneficiaries of the trust, reside on St. Croix, as does the defendant, Belardo.² Joinder of the beneficiaries as plaintiffs, being necessary in equity and good conscience, would defeat this Court's diversity jurisdiction over this matter, since both the defendant and one or more necessary plaintiffs have the same place of residence.

III. CONCLUSION

Because Hendricks lacks a material interest in the outcome of this litigation, she lacks standing, and accordingly the Court will dismiss the complaint. As further and alternative grounds for dismissing Count One of the complaint, the Court finds that

² Belardo, a resident of St. Croix, has asserted that the sixteen remaining beneficiaries of the trust also are Virgin Islands residents. The trust document itself evidences that some, if not all, of the beneficiaries other than Hendricks reside on St. Croix. Hendricks has the burden to establish this Court's subject matter jurisdiction over this case, but has not disputed the assertion that at least one of the beneficiaries is a resident of the Virgin Islands.

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Count One fails to state a claim, fails to plead fraud with requisite particularity, and fails for want of including indispensable parties, the presence of whom would defeat diversity jurisdiction.

ENTERED this 2d day of April, 2001.

For the Court

_____/s/_____
Thomas K. Moore
District Judge

ATTEST:
WILFREDO MORALES
Clerk of the Court

By:_____/s/_____
Deputy Clerk